

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD**

Dated the 7th October, 1991.

No. 1020-25/LD/91. The following Ordinance made by the President on the 3rd day of October, 1991, is hereby published for general information:-

(ORDINANCE LXXXVIII OF 1991)¹

AN

ORDINANCE

to provide for the establishment of Special Courts for Speedy trial.

WHEREAS it is expedient in the Public interest to provide for the establishment of Special Court for speedy trial and for matters connected therewith;

AND WHEREAS the Legislative Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, Extent and Commencement.**- (1) This Ordinance may be called the Special Courts for Speedy trials Ordinance, 1991.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context.-
 - (a) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);
 - (b) “Government” means the Azad Government of the State of Jammu and Kashmir;

¹Note: The Special Courts for Speedy trials Ordinance, 1991 and The AJ&K Cease Fire Line Incidents Relief (Amendment) Ordinance, 1991 issued under the same number i.e. LXXXVIII.

- (c) “Offence” means an offence specified in the schedule, or an offence punishable under any law for the time being in force, which in the opinion of the Government is gruesome, brutal and sensational in character or shocking to public morality or has led to public outrage or created panic or an atmosphere of fear or anxiety amongst the public or a section thereof or which because of increase in its incidence needs to be tried most speedily; and
 - (d) “Special Court” means a Special Court constituted under this Ordinance.
- 3. Ordinance to override other laws.- The provisions of this Ordinance shall have effect notwithstanding anything contained in the Code or in any other law for the time being in force.
- 4. Constitution of Special Courts.- (1) The Government may, by notification in the official Gazette, establish one or more Special Courts.
 - (2) A Special court shall consist of a person, to be appointed by the Government, who is, or has been, or is qualified for appointment as a judge of a High Court;

Provided that in case of a person who is a sitting Judge of a High Court, appointment of Special Judge may be made in consultation with the Chief Justice of the High Court.
 - (3) The terms and conditions of service of Judges constituting the special courts except in case where they are sitting Judges of the High Courts, shall be such as may be determined by the Government.
 - (4) A Special Court shall sit at such places as the Government may, by order, specify in that behalf.
- 5. Jurisdiction of Special Court.- (1) If the Government is of the opinion that a case relating to any offence which has been registered should be tried and decided speedily, it may order that such case shall be tried by a Special Court.
 - (2) If the Government is of the opinion that a case pending before any court should, in the public interest, be tried and decided speedily, it may, by order in writing, transfer the same for trial to a Special Court.
 - (3) The Special Court shall have the exclusive Jurisdiction to try a case in respect of which an order has been made under

sub-section (1) of Sub-section (2) and no other court shall have any jurisdiction or entertain any proceedings in respect thereof.

(4) The Special court may convict and sentence an accused caused for any offence of which he may be found guilty.

(5) The Special Court shall have, in respect of a case triable by it, all the powers which a High Court has in relation to a trial before it under the Code, including the powers relating to the grant or cancellation of bail or recall or amendment of any order, and shall, subject to this Ordinance, as nearly as may be, follow the Procedure provided in the Code for such trial.

6. Transfer of cases.- The Government may, if it considers it expedient to do so in the interest of justice or where the convenience of the parties or the safety of the accused or of the witnesses so requires, transfer any case from one Special Court to another.

7. Taking of cognizance.- (1) The officer-in-charge of a Police Station shall complete the investigation and forward directly to the Special Court a report under Section 173 of the Code within fourteen days in respect of a case triable by such Court:

Provided that the Special Court may extend the time within which such report is to be forwarded in a case where good reasons are shown for not being able to do so within time specified in this sub-section.

(2) Any default on the part of an officer-in-charge of a police station, an investigating officer or any other person required by law to perform any function in connection with the investigation, which results in, or has the effect of delaying the investigation or the submission of the report under sub-section (1), shall be deemed to be a wilful disobedience of the order of the Special Court and dealt with under the law accordingly.

(3) The Special Court may directly take cognizance of a case triable by such court without the case being sent to it under Section 190 of the Code.

(4) In cases triable by a Special Court, orders or detention of an accused in police custody under Section 167 of the Code shall be obtained from the Special Court concerned which shall record reasons for authorising or refusing such detention:

Provided that where an accused cannot within twenty-four hours be produced before the Special Court a temporary order for police custody not exceeding twenty-four hours may be

obtained from the nearest Magistrate, for the purpose of producing accused before the Special Court within that period.

(5) Where, in a case triable by the Special Court, an accused has been released from police custody under Section 169 of the Code, or has been remanded to judicial custody, the Special Court may, on good grounds being shown by a Public Prosecutor or a Law Officer of the Government for the reasons to be recorded in writing, make an order for placing him in police custody for a period not exceeding ten days for the purpose of further investigation in the case.

(6) For the purposes of sub-sections (4) and (5) a Special Court, shall be deemed to be a Magistrate.

8. Procedure of Special Court.- (1) On taking cognizance of a case, the Special Court shall proceed speedily with the trial from day to day and shall decide the case within two weeks and for any delay, sufficient reasons shall be recorded.

(2) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall, in any case, be granted for more than two working days.

(3) A Special Court shall not, merely by reason of a change of its composition or transfer of a case under sub-section (2) of Section 5 or Section 6 be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded.

(4) All proceedings before a Special Court shall be conducted in open court:

Provided that, where the Public Prosecutor so applies or the Special Court considers it necessary so to do for any reason, any proceedings or part thereof may be held in camera.

9. Cognizance of false evidence, etc.- (1) Notwithstanding anything contained in the proceeding provisions or any other law already in force, on pronouncement of the Judgment, the Special Court shall have Jurisdiction and power to take cognizance of an offence committed in the course of investigation or trial of a case tried under this Ordinance, by a police officer, officer-in-charge of a police station, a witness, including an expert who has tendered false opinion in a case relating to a matter covered by his specialty, whether he deposed in court or not, or any other person, under Sections 176 to 182 of Chapter X, Sections 191 to 204, 211 to 223 and 225-A of Chapter XI of the Penal Code (Act

XLV of 1860), or under any other law relating to false evidence and offences against public justice, and to summarily try him and award punishment provided for the offence under the law.

(2) For the purpose of trial under sub-section (1), the Special Court may, as nearly as may be, follow the procedure specified in Chapter XXII of the Code.

(3) The proceedings under sub-section (1) may be initiated by the Special Court on its own accord after the decision of the appeal, if any, or on an application made by a Law Officer or the person accused of an offence tried by the Special Court within thirty days from the order in appeal:

Provided that the time requisite in obtaining the copy of the order of the appellate court shall be excluded.

(4) The provisions of Section 13 shall, mutatis mutandis, apply to an appeal against the final order of conviction or acquittal made by the Special Court under sub-section (1).

10. Manner and place of execution of sentence.- The Government may specify the manner, mode and place of execution of any sentence passed under this Ordinance, having regard to the deterrent effect which such execution is likely to have.

11. Bail.- Notwithstanding the provisions of Sections 439, 491, 496, 497 498, 498A and 561A of the Code, no Court other than the Special Court shall have the power or jurisdiction to grant bail to any accused person in a case triable by a Special Court;

Provided that the Special Court shall not release the accused on bail, if there appear reasonable grounds for believing that he has been guilty of the offence for which he has been charge; nor shall an accused person be so released unless the prosecution has been given notice to show cause why he should not be so released.

12. Contempt of Court.- The Special Court shall have the power to punish with rigorous imprisonment for a term which may extend to one year and with fine any person who:-

- (a) abuses; interferes with or obstructs the process of the Special Court in any way or disobeys any order of Special Court;
- (b) scandalizes the Special Court or otherwise does anything which tends to bring the Special Court or the person constituting the Special Court in relation to his office into hatred, ridicule or contempt;

- (c) does anything which tends to prejudice the determination of a matter pending before the Special Court; or
 - (d) does any other thing which, by any other law, constitutes contempt of Court.
13. Appeal.- (1) An appeal against the final judgment of the Special Court shall lie to the Special Appellate Court established by the Government and consisting of a person who is, or has been, or is qualified for appointment as a judge of a High Court, hereinafter referred to as Special Appellate Court:
- Provided that a case involving sentence of death shall be heard and decided by a Special Appellate Court consisting of a Bench of not less than two Judges, each one of whom is qualified for appointment as such and, in case of difference of opinion, the case shall be laid before another Judge of the Special Appellate Court, whose decision thereon shall be final.
- (2) The Government may establish as many Special Appellate Courts as it may deem necessary.
 - (3) Copies of the judgment of a Special Court shall be supplied to the accused and the prosecutor free of cost on the day the judgment is pronounced and the record of the trial shall be transmitted to the Special Appellate Court within three days of the decision.
 - (4) An appeal under sub-section (1) shall be preferred by a person sentenced by the Special Court to the Special Appellate Court within seven days of the passing of the sentence.
 - (5) The Advocate General or Additional Advocate General may, or on being directed by the Government, shall present to the Special Appellate Court an appeal against the order of acquittal or a sentence passed by a Special Court within thirty days of such order.
 - (6) An Appeal under this section shall be heard and decided by the Special Appellate Court within seven days.
 - (7) A Special Appellate Court shall sit at such places, and have jurisdiction within such territorial limits, as may be fixed by Government.
 - (8) In exercise of the appellate jurisdiction, a Special Court shall, subject to the provisions of this Ordinance, have all the powers conferred an Appellate Court, under Chapter XXXI of the Code.
14. Power to amend the Schedule.- The Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

15. Indemnity.- No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Ordinance.
16. Trial before Special Court to have precedence.- The trial under this Ordinance of any offence by a Special Court and appearance of the accused before it shall have precedence over the trial of any other court, except where he is required to appear in person by the High Court.
17. Rules.- The Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Ordinance.

AJK LAW Department (Library)

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SCHEDULE

[See Section 2 (c)]

1. Offences punishable under Section 121, 121A, 122, 123, 123A, 124A, 161, 162, 302, 303, 354, 354A, 361, 362, 363, 364, 364A, 365, 365A, 367, 368, 369, 386, 387, 392, to 404, 406 to 409, 417 to 420, 436, 440, 465 and 503 of the Penal Code (Act XLV of 1860), and as attempts, abetments and conspiracies in relation or connected therewith.
2. Offences under the Explosive Substances Act, 1908 VI of 1908).
3. Offences under the West Pakistan Arms Ordinance, 1965 (W.P. Ordinance No. XX of 1965) as adopted in AJK.
4. Offences punishable under the prohibition (Enforcement of Hadd) Act, 1985 (Act IV of 1985).
5. Offences under Islami Tazirati Qawanin (Nafaz) Act, 1974.
6. The Offence of Zina (Enforcement of Huddood) Act, 1985.
7. The Offences against Property (Enforcement of Hudood) Act, 1985.

Sd/-

(Sardar Sikandar Hayat Khan)

President

Azad Jammu and Kashmir

Sd/-

(Syed Mohammad Akram Shah)

Secretary Law